

**STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF FORESTRY**



**FAIRBANKS AREA FORESTRY
FINAL DECISION BEST INTEREST FINDING
FOR
SALCHA FLOOD SALVAGE
ADL# 420349
1/20/2015**

I. ACTION

DOF is proposing to offer for sale approximately 300 acres of flood killed timber from state lands roughly 4 miles west of Harding Lake in the Salcha area. The volume to be offered totals approximately 1,425,000 board feet or 527,000 cubic feet of white spruce and balsam poplar. DOF would sell the timber in a combination of competitive bid and negotiated sales for commercial use. In addition, personal use firewood harvest permits would be made available to the public for designated areas utilizing the Fairbanks Area Firewood Online Permitting System. These personal use harvests will be accessed via winter road where construction would be contracted out by DOF.

The management objectives for the proposed timber sales are:

- Harvest the commercial sawtimber and fuelwood before further significant loss occurs.
- Provide timber products for the industry and the state and local economy.
- Provide a source of accessible firewood for the residential heating needs of local residents.

II. STATUTORY AND REGULATORY AUTHORITY

The Division is taking this action under the authority of

- AS 38.05.035(e) Best Interest Finding;
- AS 38.05.110-120 and 11 AAC 71, Timber Sale Statutes and Regulations; and
- AS 41.17.010-950 and 11 AAC 95 Forest Resources and Practices Statutes and Regulations.

III. ADMINISTRATIVE RECORD

The Division will maintain an administrative record regarding the decision of whether or not to proceed with the action as proposed. This record will be maintained at the DOF's Fairbanks Area Office filed as ADL# 420349.

IV. SCOPE OF DECISION

This best interest finding (BIF) is the first part of step two of a five-step process to design, sell, and administer timber sales. This BIF covers the sale of approximately 300 acres flood-killed timber on state land within the perimeter of the 14,740-acre management subunit 7A of the Tanana Valley State Forest (TVSF). The following list summarizes the overall process:

Step 1: Regional Planning. The Department of Natural Resources (DNR) develops area plans and state forest management plans to designate appropriate uses for state land, classify the land accordingly, and establish management guidelines for multiple use. These plans determine where timber sales are an allowed use, and what other uses must be considered when designing and implementing sales. Subsequent land use decisions must be consistent with the area plans. The area in this BIF is covered by the Tanana Valley State Forest Management Plan and the Tanana Basin Area Plan. The finding also considers the Fairbanks North Star Borough Comprehensive Plan and the Interagency Wildland Fire Management Plan.

Step 2: Best Interest Finding. A best interest finding is the decision document that:

- Establishes the overall area within which the timber sale may occur,
- Determines the amount of timber that will be offered for sale and the duration of the sale,
- Sets the overall harvest and reforestation strategy for the sale area,
- Determines whether the sale proposal complies with the Constitutional requirement to manage for sustained yield by evaluating the amount of timber in the sale and the annual allowable cut for the affected area,
- Selects the appropriate method of sale (i.e., competitive or negotiated sale), and
- Determines the appraisal method that will be used to determine the sale price.

After public and agency review of the PBIF, DOF reviewed comments, made changes as appropriate, and issued a final best interest finding (BIF). DOF must adopt a final BIF before selling timber. A person affected by the final decision who provided timely written comment or public hearing testimony on the preliminary decision may appeal it, in accordance with 11 AAC 02.

Step 3: Forest Land Use Plans (AS 38.05.112). Prior to authorizing harvest of timber on any area greater than 10 acres, the DOF must adopt a site-specific Forest Land Use Plan (FLUP) for the harvest area. DOF will prepare FLUPs for harvest areas within the overall sale area covered by this best interest finding. FLUPs specify the site, size, timing, and harvest methods for harvest unit within the sale area. FLUPs also address site-specific requirements for access construction and maintenance, reforestation, and multiple use management. Draft FLUPs will be based on additional field work, agency and community consultation, and site-specific analyses by the DOF, and will be subject to public and agency review.

Step 4: Timber sales and contracts. Following adoption of the final best interest finding, and completion of the FLUPs, DOF will offer the timber for sale by auctioning competitive sales and/or negotiating some sales with purchasers including permits for personal use firewood. The Division will sign a contract with the winning bidder for each sale. The contract will include stipulations to ensure compliance with the best interest finding, FLUP, and statutory requirements.

Step 5: Sale administration. DOF administers timber sales and conducts field inspections to ensure compliance with the final best interest finding, FLUP, timber sale contract, and applicable laws, including the Alaska Forest Resources and Practices Act and regulations (AS 41.17 and 11 AAC 95), and forest management statutes and regulations in AS 38.05 and 11 AAC 71.

V. PROJECT LOCATION, LAND STATUS, AND DESCRIPTION

A. Location

This BIF covers approximately 300 acres of Tanana River islands on State land within the Tanana Valley State Forest subunit 7A. The salvage area and proposed access are located within: Sections 19, 20, 29-32 of Township 5 South, Range 4 East and Section 5 of Township 6 South, Range 4 East, Fairbanks Meridian. The area is found on USGS quads Big Delta B-6 and Fairbanks B1 (see attached maps).

B. Title status

The timber salvage area is within the TVSF on General Selection land within two townships. There are no title restrictions on the parcels proposed for salvage harvest. The acquisition authority and land classification are as follows;

Township, Range, Meridian	Acquisition Authority	Classification Order	Land Use Plan
T 5 S, R 4 E, F	GS-3685	NC-82-065 Forest	TVSF
T 6 S, R 4 E, F	GS-1425	NC-82-065 Forest	TVSF

C. Land use planning, classification, and management intent

The proposed area is within the Tanana Valley State Forest subunit 7A. There are no specific restrictions stated in the TVSF management plan that are applicable to this proposed project. Guidelines for special management zones do apply for the Tanana River including side channels, sloughs, and backwaters. The area is accessed using secondary roads via the Old Valdez Trail. The proposed harvest units are designed to be consistent with the intent of the plan. The area is open to subsurface use and mineral entry.

The Interagency Fire Management Plan includes these lands in the “Full” protection category.

The Fairbanks North Star Borough Comprehensive Plan supports forest development activities while minimizing land use conflicts.

D. Current access and land use:

Currently the proposed timber salvage area is accessed from the Richardson Highway at roughly milepost 320. From the highway the Old Valdez Trail continues west for approximately 2.7 miles to a slough of the Tanana River. From this point approximately 2-3 miles of new secondary winter road will be constructed to access the proposed harvest.

The Division of Forestry manages all the land within the harvest areas. Multiple trap lines and recreational trails are within the general vicinity and hunters frequent the area for sport hunting. Boating, snowmachining and mushing are also popular activities.

E. Background and description of proposal

1. Background: Seasonal flooding due to silt deposition and the continuing meandering nature of the Tanana River caused this mortality event within the TVSF over the course of approximately 3-5 years. Evidence of this was observed during a flight over the area in August 2014 and appears in recent aerial imagery. The area was ultimately ground-truthed by boat in September. Following identification of the area, DOF reviewed existing land use plans, considered markets for the salvage timber, and designed this proposal to salvage as much timber as possible from within the identified area on state land, while protecting the fish, wildlife, and water resources, and avoiding impacts to local access, recreation uses and archaeological sites.
2. Timber volume and sustained yield: The proposed project area has an estimated volume of 1,425,000 board feet or 527,000 cubic feet of white spruce and balsam poplar saw and

pole class timber on approximately 300 acres of land. The Fairbanks Area Annual Allowable Cut (AAC) is calculated at approximately 4,606 acres of harvest annually. This action alone and in combination with other timber sales that are sold will be within the allowable cut and comply with sustained yield requirements.

3. Harvest unit design: Unit size is anticipated to range between 0.5 and 30 acres. Clear-cuts will be utilized to harvest the timber volumes proposed in the FLUPS. Sale unit boundaries will be located along flow channels and naturally occurring vegetative type changes within identified area. A 100 foot buffer will be maintained along sloughs and channels with the intent to maintain a short and long term source of large woody debris as well as comply with Alaska Forest Resources and Practices Act.
 - a. Reforestation and site preparation: Natural reforestation is expected to produce some balsam poplar and hardwood growth. However, as evidenced by aerial imagery from 2008 and 2012, the river is rapidly eroding the landscape and the timbered islands are not expected to last a full rotation.
 - b. Access design and construction: Access design, construction, and maintenance will comply with the Forest Resources and Practices regulations (11 AAC 95.285-.355).
 - The existing Old Valdez Trail road will be used from the Richardson Highway to the Tanana River. Proposed new forest access will be constructed to a secondary winter road standard utilizing existing sloughs and channels.
 - Any slough crossing will be done so using an ice bridge with specifics for construction and any required permits to be included in the road contract. The crossing is anticipated to require a Fish Habitat Permit for a winter stream crossing (AS 16.05.871 (b))
 - DOF will contract out the initial building of the winter road and any further plowing or maintenance will be dependent upon available funding.
 - Generally DOF applies for public easement right of ways for its long-term routes; however, this proposed access is seasonal and short term.
 - c. Appraisal method: The units will be a mix of commercial timber sales and private personal use cutting areas. Commercial sales will be based on transactional evidence and market demand and DOF will apply a value for those products. Personal use cutting will utilize the existing Fairbanks Area Firewood Online Permitting System. DOF will appraise the timber value in compliance with 11 AAC 71.092.

F. Resources and management

1. Timber

- a. Timber stand composition and structure: The stands to be salvaged are a mixture of fully mature white spruce and balsam poplar with some interspersed black spruce, birch and other hardwoods.
- b. Stand silvics: The flooding has increased in severity over the last 5 years to the point that large portions of the area appear to have been and will continue to be lost to the river. Remarkably much of the units contain standing timber, but damage from rot, insects, and winds are becoming more prevalent. Given these conditions and the

eroding nature of the river channels, the marketability of the wood will continue to devalue.

- c. Topography and Soils: The proposed sale will be designed and managed to prevent significant impairment of the land and water with respect to renewable resources (AS 41.17.060(c)(5)). The area lies within the Tanana River floodplain at an approximate elevation of 600 feet and consists of meandering sloughs and terrace features created from past floods and river bed movement.
2. Agriculture. There is no current agriculture activity in the area and activities in the sale units are not expected to affect these agricultural uses.
3. Wildlife habitat and harvest. Most of the common species found in interior Alaskan forests have inhabited the area which historically had been prime moose and furbearer habitat. Most of these animals have been displaced from the area during the flood events. Winter timber harvest is not expected to have negative effects on hunting or trapping in the area.
4. Fish Habitat, water resources, and water quality. The proposed sale will be designed and managed to protect fish habitat and water quality in compliance with the Forest Resources and Practices Act and regulations (AS 41.17 and 11 AAC 95) . A 100 foot buffer will be maintained along sloughs and channels with the intent to maintain a short and long term source of large woody debris.
5. Recreation, tourism, and scenic resources. The most common recreational activities in the area occur seasonally in the form of dog mushing and snowmachining as this is a difficult section of the river to boat. If any trails are encountered during road construction, contractors will provide for trail crossings and DOF will post signs identifying the proposed harvest area. Any harvest activities within the proposed areas will not be visible from the Richardson Highway.
6. Cultural Resources. DOF works with the State Historic Preservation Office (SHPO) to identify and avoid known cultural, historic or prehistoric sites in planning the proposed access routes and salvage areas. If additional archaeological sites are identified, proposed salvage areas and road locations will be appropriately adjusted to avoid conflicts. If any historic or archaeological sites are encountered during road construction or harvest activities, DOF will immediately inform SHPO and take action to protect the findings.
7. Subsurface Resources. There are no anticipated effects on any mining, oil or gas activity although the area is open to mineral entry and available for leasing.

G. Costs and benefits

No significant negative economic effects are anticipated upon the timber markets, local or regional, as result of this proposed action. Salvage of the proposed timber volume may provide a short-term benefit to the local economy due to the availability of low-cost fuel for home heating and jobs in timber harvesting. DOF will need to monitor firewood harvesting operations because of the strong possibility of illegal harvesting. DOF may have to close roads to the commercial and personal use timber sales to prevent unauthorized harvest. Public use firewood demand on

this area is expected to be quite high during the winter access period. The Division will plan to issue general use permits and designate areas for personal use sales within the salvage area boundary. Commercial timber salvage harvest operations will provide winter road maintenance facilitating public access to the salvage are-as.

VI. PUBLIC AND AGENCY COMMENT

On December 5, 2014 the public and agencies were invited to comment on the Proposed Best Interest Finding. Objections or comments pertaining to the proposed action must have been received in writing by the DOF Fairbanks Area Office by 5:00 pm Friday January 9, 2015.

During the review for this finding, the division used a variety of methods to contact interested agencies, organizations and individuals concerning the proposed salvage sale in the Fairbanks resource area. Three agency comments were received and those are outlined in the attached matrix. For more information you may contact the Fairbanks Area Office at 907-451-2600. To be eligible to appeal the final decision, a person must have provided written comment by 5:00 pm Friday January 9, 2015.

VII. PUBLIC NOTICE

The PBIF was publicly noticed in compliance with AS 38.05.945. Notice was posted on the Alaska Online Public Notice System (<http://aws.state.ak.us/OnlinePublicNotices/>) and the Forestry Timber website (<http://forestry.alaska.gov/timber/fairbanks.htm#flup>).

VIII. ALTERNATIVES AND DISCUSSION

There are 4 possible alternatives to consider for this project area. A discussion of each of the alternatives follows. All alternatives are consistent with the area plan and applicable statutes and regulations.

A. Conduct the project as proposed:

This alternative meets the objectives for timber salvage prior to loss of economic value providing commercial timber products. It will also provide fuelwood to the local area and commercial dry firewood to the Fairbanks Area market. Additional employment opportunities will occur associated with salvage operations saw milling and value-added processing.

B. Modify the project by making it smaller or larger:

The estimated volume and acreage of timber to be salvaged from the Salcha Flood Salvage as stated in this Best Interest Finding is designed to provide commercial fuelwood to the Fairbanks area as well as accommodate the existing market in the vicinity of Delta Junction. There is little opportunity to increase the size of the proposed project because most of the commercial sized timber was included in this proposal. Decreasing the size of the project would potentially waste valuable timber that was flood killed and that could be used in the local economy in the next 1-5 years.

C. Defer the project to a later date:

Deferring harvest to a later date would result in lost timber value. Flood killed timber degrades rapidly due to subsequent infestations of insects and large portions can be swept away by the river. The volume and value of the timber could drastically decline within the next 12 months for both the industry and the State. Access to the salvage area is only during the winter months; delaying this project would not allow the timber industry to utilize the available sawtimber and the local area residents would not have access to firewood that is in extremely high demand.

D. Cancel the project:

Canceling the project would not meet the objectives outlined for this management action. The salvage timber would not be utilized, and there would be no contribution to the State and local economies.

IX. RECOMMENDATION AND FINAL DECISION

After due consideration of all pertinent information and alternatives, the DNR has reached the following Decision: To offer for sale approximately 300 acres of sawtimber and poletimber to provide sawlogs and fuelwood as proposed in **Alternative A** and described in this BIF. The DOF finds that this final decision satisfies the objectives stated in this document and it is in the best interest of the State to proceed with this action under its authority of AS 38.05.035(e) (Powers and Duties of the Director) & AS 38.05.110-120; 11 AAC 71 (Timber Sale Statutes and Regulations).

A person is eligible to participate in any appeal or request for reconsideration to the final finding if they have submitted comment to the preliminary finding and decision during the comment period. If you have any questions, please contact Paul Maki, Acting Fairbanks Area Forester, at paul.maki@alaska.gov or 907-451-2601.



Fairbanks Area Forester

January 20, 2015

Date

XI. ATTACHMENTS

Maps of the proposed project area follow.

**COMMENT MATRIX PRELIMINARY DECISION AND BEST INTEREST FINDING
SALCHA FLOOD SALVAGE**

Commenter	Received	Comment	Action
ADF&G Division of Habitat Jim Durst	1/5/2015 Email	Clarification of access management for harvest areas. Riparian harvest restrictions; implementation and monitoring processes.	Maintain riparian buffers for all access and commercial sales. Personal use firewood permits will allow for cutting in specified areas.
MHT Lands Office Bruce Buzby	12/11/2014 Email	Access via the Old Valdez Trail crosses Trust lands and was not addressed in the PBIF.	A letter of authorization was agreed upon allowing the DOF and its contractors access to the project site.
Alaska State Historic Preservation Office/Office of History and Archaeology Mackenzie Johnson	12/9/2014 Email	No none cultural resource sites in the project area and no concerns regarding the use of Old Valdez Trail as primary access route.	Continue with proposed project and notify if any sites are discovered.

APPENDIX __. APPEAL AND REQUEST FOR RECONSIDERATION REGULATIONS

Note: "Appeal" means a request to the commissioner to review a decision that the commissioner did not sign or cosign. "Request for reconsideration" means a petition or request to the commissioner to review an original decision that the commissioner signed or cosigned.

TITLE 11. NATURAL RESOURCES.

CHAPTER 02. APPEALS.

11 AAC 02.010. APPLICABILITY AND ELIGIBILITY. (a) This chapter sets out the administrative review procedure available to a person affected by a decision of the department. If a statute or a provision of this title prescribes a different procedure with respect to a particular decision, that procedure must be followed when it conflicts with this chapter.

(b) Unless a statute does not permit an appeal, an applicant is eligible to appeal or request reconsideration of the department's decision on the application. An applicant is eligible to participate in any appeal or request for reconsideration filed by any other eligible party.

(c) If a statute restricts eligibility to appeal or request reconsideration of a decision to those who have provided timely written comment or public hearing testimony on the decision, the department will give notice of that eligibility restriction as part of its public notice announcing the opportunity to comment.

(d) If the department gives public notice and allows a public comment period of at least 30 days on a proposed action, and if no statute requires opportunity for public comment, the department may restrict eligibility to appeal or request reconsideration to those who have provided timely written comment or public hearing testimony on the proposed action by including notice of the restriction as part of its public notice announcing the opportunity to comment.

(e) An eligible person affected by a decision of the department that the commissioner did not sign or cosign may appeal the decision to the commissioner within the period set by 11 AAC 02.040.

(f) An eligible person affected by a decision of the department that the commissioner signed or cosigned may request the commissioner's reconsideration within the period set by 11 AAC 02.040.

(g) A person may not both appeal and request reconsideration of a decision. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority:

AS 03.05.010	AS 38.05.020	AS 38.50.160	AS 44.37.011
AS 29.65.050	AS 38.05.035	AS 41.15.020	AS 46.15.020
AS 29.65.120	AS 38.08.110	AS 41.17.055	AS 46.17.030
AS 38.04.900	AS 38.09.110	AS 41.21.020	

11 AAC 02.015. COMBINED DECISIONS. (a) When the department issues a combined decision that is both a final disposal decision under AS 38.05.035(e) and any other decision, including a disposal decision combined with a land use plan decision, or a disposal decision to grant certain applications combined with a decision to deny others, the appeal process set out for a disposal decision in AS 38.05.035(i) - (m) and this chapter applies to the combined decision.

(b) A decision of the department may include a statement that a final consistency determination under AS 46.40 (Alaska Coastal Management Program) has been rendered in conjunction with the decision. A person may not, under this chapter, appeal or request reconsideration of the final consistency determination, including a requirement necessary solely to ensure the activity is consistent with the Alaska coastal management program as approved under AS 46.40. (Eff. 9/19/2001, Register 159)

Authority:

AS 29.65.050
AS 29.65.120

AS 38.04.900
AS 38.05.020

AS 38.05.035
AS 38.08.110

AS 38.09.110
AS 38.50.160

11 AAC 02.020. FINALITY OF A DECISION FOR PURPOSES OF APPEAL TO COURT. (a)

Unless otherwise provided in a statute or a provision of this title, an eligible person must first either appeal or request reconsideration of a decision in accordance with this chapter before appealing a decision to superior court.

(b) The commissioner's decision on appeal is the final administrative order and decision of the department for purposes of appeal to the superior court.

(c) The commissioner may order or deny a request for reconsideration within 30 calendar days after issuance of the decision, as determined under 11 AAC 02.040(c)-(e). If the commissioner takes no action during the 30-day period, the request for reconsideration is considered denied. Denial of a request for reconsideration is the final administrative order and decision of the department for purposes of appeal to the superior court.

(d) If the commissioner timely orders reconsideration of the decision, the commissioner may affirm the decision, issue a new or modified decision, or remand the matter to the director for further proceedings. The commissioner's decision, other than a remand decision, is the final administrative order and decision of the department for purposes of appeal to the superior court. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority:

AS 03.05.010
AS 38.04.900
AS 38.08.110
AS 41.15.020

AS 44.37.011
AS 29.65.050
AS 29.65.120
AS 38.05.020

AS 38.05.035
AS 38.09.110
AS 38.50.160
AS 41.17.055

AS 41.21.020
AS 46.15.020
AS 46.17.030

11 AAC 02.030. FILING AN APPEAL OR REQUEST FOR RECONSIDERATION. (a) An

appeal or request for reconsideration under this chapter must

- (1) be in writing;
- (2) be filed by personal service, mail, fax, or electronic mail;
- (3) be signed by the appellant or the appellant's attorney, unless filed by electronic mail; an appeal or request for reconsideration filed by electronic mail must state the name of the person appealing or requesting reconsideration and a single point of contact to which any notice or decision concerning the appeal or request for reconsideration is to be sent;
- (4) be correctly addressed;
- (5) be timely filed in accordance with 11 AAC 02.040;
- (6) specify the case reference number used by the department, if any;
- (7) specify the decision being appealed or for which reconsideration is being requested;
- (8) specify the basis upon which the decision is challenged;
- (9) specify any material facts disputed by the appellant;
- (10) specify the remedy requested by the appellant;
- (11) state the address to which any notice or decision concerning the appeal or request for reconsideration is to be mailed; an appellant may also provide a telephone number where the appellant can be reached during the day or an electronic mail address; an appeal or request for reconsideration filed electronically must state a single address to which any notice or decision concerning the appeal or request for reconsideration is to be mailed;

- (12) identify any other affected agreement, contract, lease, permit, or application by case reference number, if any; and
- (13) include a request for an oral hearing, if desired; in the appeal or request for reconsideration, the appellant may include a request for any special procedures to be used at the hearing; the appeal or request for reconsideration must describe the factual issues to be considered at the hearing.
- (b) At the time an appeal is filed, and up until the deadline set out in 11 AAC 02.040(a) to file the appeal, an appellant may submit additional written material in support of the appeal, including evidence or legal argument.
- (c) If public notice announcing a comment period of at least 30 days was given before the decision, an appellant may not submit additional written material after the deadline for filing the appeal, unless the appeal meets the requirement of (a) of this section and includes a request for an extension of time, and the department determines that the appellant has shown good cause for an extension. In considering whether the appellant has shown good cause, the department will consider factors including one or more of the following:
- (1) comments already received from the appellant and others;
 - (2) whether the additional material is likely to affect the outcome of the appeal;
 - (3) whether the additional material could reasonably have been submitted without an extension;
 - (4) the length of the extension requested;
 - (5) the potential effect of delay if an extension is granted.
- (d) If public notice announcing a comment period of at least 30 days was not given before the decision, an appellant may submit additional written material after the deadline for filing the appeal, if the appeal meets the requirements of (a) of this section and includes a notice of intent to file the additional written material. The department must receive the additional written material within 20 days after the deadline for filing the appeal, unless the appeal also includes a request for an extension of time, and the department determines that the appellant has shown good cause for an extension. In considering whether the appellant has shown good cause, the department will consider factors including one or more of the following:
- (1) comments already received from the appellant and others;
 - (2) whether the additional material is likely to affect the outcome of the appeal;
 - (3) whether the additional material could reasonably have been submitted without an extension;
 - (4) the length of the extension requested;
 - (5) the potential effect of delay if an extension is granted.
- (e) At the time a request for reconsideration is filed, and up until the deadline to file a request for reconsideration, an appellant may submit additional written material in support of the request for reconsideration, including evidence or legal argument. No additional written material may be submitted after the deadline for filing the request for reconsideration.
- (f) If the decision is one described in 11 AAC 02.060(c), an appellant who believes a stay of the decision is justified may ask for a stay as part of the appeal or request for reconsideration. The appellant must include an argument as to why the public interest requires a stay. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority:

AS 03.05.010	AS 38.05.020	AS 38.50.160	AS 44.37.011
AS 29.65.050	AS 38.05.035	AS 41.15.020	AS 46.15.020
AS 29.65.120	AS 38.08.110	AS 41.17.055	AS 46.17.030
AS 38.04.900	AS 38.09.110	AS 41.21.020	

Editor's note: The address for an appeal or request for reconsideration by personal service and by mail is: Department of Natural Resources, Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501-3561. The number for an appeal or request for reconsideration by fax is: 1-907-269-8918. The electronic mailing address for an appeal or request for reconsideration by electronic mail is: dnr.appeals@alaska.gov.

11 AAC 02.040. TIMELY FILING; ISSUANCE OF DECISION. (a) To be timely filed, an appeal or request for reconsideration must be received by the commissioner's office within 20 calendar days after issuance of the decision, as determined under (c) or (d) of this section, unless another period is set by statute, regulation, or existing contract. If the 20th day falls on a day when the department is officially closed, the appeal or request for reconsideration must be filed by the next working day.

(b) An appeal or request for reconsideration will not be accepted if it is not timely filed.

(c) If the appellant is a person to whom the department delivers a decision by personal service or by certified mail, return receipt requested, issuance occurs when the addressee or the addressee's agent signs for the decision. If the addressee or the addressee's agent neglects or refuses to sign for the certified mail, or if the address that the addressee provided to the department is not correct, issuance by certified mail occurs when the decision is deposited in a United States general or branch post office, enclosed in a postage-paid wrapper or envelope, addressed to the person's current address of record with the department, or to the address specified by the appellant under 11 AAC 02.030(a)(11).

(d) If the appellant is a person to whom the department did not deliver a decision by personal service or certified mail, issuance occurs

(1) when the department gives public notice of the decision; or

(2) if no public notice is given, when the decision is signed; however, the department may state in the decision a later date of issuance and the corresponding due date for any appeal or request for reconsideration.

(e) The date of issuance constitutes delivery or mailing for purposes of a reconsideration request under AS 44.37.011(d) or AS 44.62.540(a). (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority:

AS 03.05.010	AS 38.05.020	AS 38.50.160	AS 44.37.011
AS 29.65.050	AS 38.05.035	AS 41.15.020	AS 46.15.020
AS 29.65.120	AS 38.08.110	AS 41.17.055	AS 46.17.030
AS 38.04.900	AS 38.09.110	AS 41.21.020	

11 AAC 02.050. HEARINGS. (a) The department will, in its discretion, hold a hearing when questions of fact must be resolved.

(b) The hearing procedure will be determined by the department on a case-by-case basis. As provided in 11 AAC 02.030(a)(13), any request for special procedures must be included with the request for a hearing.

(c) In a hearing held under this section

(1) formal rules of evidence need not apply; and

(2) the hearing will be recorded, and may be transcribed at the request and expense of the party requesting the transcript. (Eff. 11/7/90, Register 116)

Authority:

AS 03.05.010	AS 29.65.050	AS 29.65.120	AS 38.04.900
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AS 38.05.020	AS 38.50.160	AS 41.21.020
AS 38.08.110	AS 41.15.020	AS 46.15.020
AS 38.09.110	AS 41.17.055	AS 46.17.030

11 AAC 02.060. STAYS; EXCEPTIONS. (a) Except as provided in (c) and (d) of this section, timely appealing or requesting reconsideration of a decision in accordance with this chapter stays the decision during the commissioner's consideration of the appeal or request for reconsideration. If the commissioner determines that the public interest requires removal of the stay, the commissioner will remove the stay and allow all or part of the decision to take effect on the date set in the decision or a date set by the commissioner.

(b) Repealed 9/19/2001.

(c) Unless otherwise provided, in a statute or a provision of this title, a decision takes effect immediately if it is a decision to

- (1) issue a permit, that is revocable at will;
- (2) approve surface operations for a disposal that has already occurred or a property right that has already vested; or
- (3) administer an issued oil and gas lease or license, or an oil and gas unit agreement.

(d) Timely appealing or requesting reconsideration of a decision described in (c) of this section does not automatically stay the decision. However, the commissioner will impose a stay, on the commissioner's own motion or at the request of an appellant, if the commissioner determines that the public interest requires it.

(e) A decision takes effect immediately if no party is eligible to appeal or request reconsideration and the commissioner waives the commissioner's right to review or reconsider the decision. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority:

AS 03.05.010	AS 38.05.020	AS 38.50.160	AS 46.15.020
AS 29.65.050	AS 38.05.035	AS 41.15.020	AS 46.17.030
AS 29.65.120	AS 38.08.110	AS 41.17.055	
AS 38.04.900	AS 38.09.110	AS 41.21.020	

11 AAC 02.070. WAIVER OF PROCEDURAL VIOLATIONS. The commissioner may, to the extent allowed by applicable law, waive a requirement of this chapter if the public interest or the interests of justice so require. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority:

AS 03.05.010	AS 41.21.020	AS 38.05.020	AS 41.17.055
AS 29.65.120	AS 03.10.020	AS 38.08.110	AS 46.15.020
AS 38.05.035	AS 29.65.050	AS 38.09.110	AS 46.17.030
AS 38.50.160	AS 38.04.900	AS 41.15.020	

11 AAC 02.900. DEFINITIONS. In this chapter,

- (1) "appeal" means a request to the commissioner to review a decision that the commissioner did not sign or cosign;
- (2) "appellant" means a person who files an appeal or a request for reconsideration.
- (3) "commissioner" means the commissioner of natural resources;

(4) "decision" means a written discretionary or factual determination by the department specifying the details of the action to be allowed or taken;

(5) "department" means, depending of the particular context in which the term is used, the Department of Natural Resources, the commissioner, the director of a division within the Department of Natural Resources, or an authorized employee of the Department of Natural Resources;

(6) "request for reconsideration" means a petition or request to the commissioner to review an original decision that the commissioner signed or cosigned. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority:

AS 03.05.010	AS 38.05.035	AS 41.17.055
AS 29.65.050	AS 38.08.110	AS 41.21.020
AS 29.65.120	AS 38.09.110	AS 44.37.011
AS 38.04.900	AS 38.50.160	AS 44.62.540
AS 38.05.020	AS 41.15.020	AS 46.15.020
AS 46.17.030		

